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Testimony of William Stokesbury

IN SUPPORT

SB130
An Act Concerning the Payment of First or Secondary Mortgage Loan Proceeds by Wire Transfer

Banks Committee
February 25, 2014

Sen. Leone, Rep. Tong, members of the Banking Committee.

My name is William Stokesbury. I am a member of the Executive Committee of the Connecticut Bar Association Real Property Section and I am before you today on behalf of the Section and the Connecticut Bar Association to request your support of Raised Bill 130 "An Act Concerning the Payment of First or Secondary Mortgage Loan Proceeds by Wire Transfer".

The excesses that led to the mortgage crisis of 2007 have caused lenders to be extremely cautious before loaning money. While this has generally been a good thing, in the residential financing market this practice has led to perhaps unintended consequences at the closings.

In the extreme, this has led to lenders not wiring funds until all the documents are signed, some or all of those signed documents being transmitted by fax or email to the lender, delay while the signed documents are reviewed by the lender's underwriter and then, and only then, are the funds released to be wired to the attorney settlement agent.

Once the lender makes the decision to release closing funds, the funding process itself can take hours before the funds actually reach the closing attorney's IOLTA account. Remember, a wire initiated on the West Coast at any time after noon local time is at risk of not reaching the closing attorney's account before the end of business. In the interim the closing is in limbo. Funds cannot be exchanged and the title to the property isn't transferred. The buyer and seller are stuck. The moving vans remain on hold. The Sellers can't move on and buy their new home. Existing loans can't be paid off. This domino effect can be quite significant, particularly at month end, stopping multiple closings in their tracks.

As attorney settlement agents, we are required to hold the funds for each closing in Interest on Lawyers Trust Accounts (IOLTA) Accounts, and we are bound by our ethical rules not to commingle those clients' funds. Accordingly, to comply with her ethical obligations, the prudent attorney has the choice of making the parties wait at the closing table until funds are received and credited to her IOLTA or adjourning the closing until the funds are received and checks can be negotiated from the IOLTA account.

It is the position of the Connecticut Bar Association and its Real Property Section that it is reasonable to require lenders, who are charging interest to their customers from the date and time of closing, to have the money available at the date and time of closing. We do not object to lenders giving us strict instructions not to release the funds until they have reviewed the signed closing documents.

You may well hear arguments that the wiring the day before will cost the lenders extra interest. Or that the scrutiny that lenders are under by regulators makes it prudent to hold the wire until signed closing documents have been reviewed. Or that lenders can only guarantee to send the wire but cannot guarantee against delays when the wire is in the Federal system.

As with all legislation, this is a balancing test between the relative harm to lenders to require them to make reasonable accommodation to get the funds into the settlement agents hands at the date and time of closing against the inconvenience and disruption of commerce that occurs when buyers and sellers are left sitting at the closing table waiting on a late-funded wire to hit.

To accommodate the marketplace pressure to close, many lawyers will release their checks, in escrow, to save the parties the inconvenience of returning to the closing table. If the wire is not received, or there is a delay in sending the wire, a delay in wire receipt, or even a bank failure and the checks released into escrow are negotiated, there is a probability that the attorney settlement agent will violate his or her ethical obligation not to commingle funds of different clients (Rules of Professional Conduct Rule 1.15) and also his or her ethical obligation with respect to dual representation of clients (Rules of Professional Conduct Rule 1.7).

Many, if not all lenders, in preparation for the changes anticipated by the Consumer Financial Protection Bureau (CFPB) have already begun vetting their attorney settlement agents to ensure that they only have the best qualified settlement agents closing their loans. The risk that a package may be deficient is smaller when qualified experienced attorney settlement agents are used.

We urge enactment of Raised Bill No. 130 to facilitate smooth closings for Connecticut consumers.

Thank you for your consideration and I would be happy to entertain any questions you may have.